

14 JANUARY 1948

I N D E X

of

EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Fros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2981		3739	Telegram from Foreign Minister SHIDEHARA to Consul-General HAYASHI at Mukden dated 5 September 1931		37315
1767A-1		3740	Telegram from Foreign Minister SHIDEHARA to Consul-General HAYASHI dated 19 September 1931		37317
			Rejected		37319
1767A-14		2406	Telegram from Consul- General HAYASHI in Mukden to Foreign Minister SHIDEHARA dated 13 October 1931		37322
1767-B		2407	Telegram from Consul- General HAYASHI in Mukden to Foreign Minister SHIDEHARA dated 17 October 1931		37324
			<u>MORNING RECESS</u>		37328
1767A-22		3740	Telegram from Consul- General HAYASHI in Mukden to Foreign Minister SHIDEHARA dated 13 October 1931		37339
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(cont'd)

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
2570-B		3457	Matters Decided Upon at the Five Ministers' Conference as of 31 October 1938		37350
2178		3741	Volume entitled "New Chinese Central Govern- ment"		37372
2178(A)		3741-A	Excerpt therefrom - The Essential Points of Administration in the Hankow District (Decided by the War, Navy and Foreign Ministers on 28 October 1938)		37372
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2178(G)		3743	Document on "The Expenses Required for the "WU" Project" - Decided in the Conference of the China Affairs Board on 23 June 1939		37393
1005(1)		3744	Document Regarding the Necessary Expense of the Anti-Comintern National Salvation League		37396
1685-D		3745	Outline To Guide the Central Political Conference dated 1 November 1939 - Decided by the Conference of China Affairs Board		37398

I N D E X

Of

WITNESSES

(none)

Wednesday, 14 January 1948

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE R. B. PAL,
Member from India, not sitting from 1500 to 1600.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except SHIRATORI who is represented by counsel. The
5 Sugamo prison surgeon certifies that he is ill and
6 unable to attend the trial today. The certificate will
7 be recorded and filed.

8 Colonel Warren.

9 MR. WARREN: I was arguing yesterday with
10 reference to document No. 2981

11 Now, if the Tribunal please, I called to the
12 Tribunal's attention yesterday the fact that this tele-
13 gram could be nothing but rumor based upon rumor and
14 that the content was contrary to the prosecution evi-
15 dence.

16 THE PRESIDENT: Well, in an ordinary court
17 we would tell you that only goes to weight, but here
18 you are entitled to argue probative value. But we have
19 all those things in mind, Colonel.

20 MR. WARREN: I have in mind this proposition,
21 your Honor, that we are not permitted under our rule
22 of procedure to impeach our own witness or contradict
23 our own evidence, and this they have done; that is
24 what they are attempting to do. In any event, I shall
25 soon have finished with my argument on this point.

1 I wish to point out that the telegram states
2 in substance that with a view to the tardy progress
3 of the negotiations regarding the NAKAMURA Incident
4 that the Foreign Office feared that something might
5 take place. Now this was addressed to Consul-General
6 HAYASHI, and on page 65 of exhibit 57, which is the
7 Lytton Report, we find these statements. This is prose-
8 cution evidence and I take it they are bound by it. I
9 am quoting: "The second Chinese commission of investi-
10 cation, after visiting the scene of the killing of
11 Captain NAKAMURA, returned to Mukden on the morning
12 of September 16th." Then skipping some descriptive
13 words, and so forth, in there then we continue: "Consul-
14 General HAYASHI, Mukden, was reported on September 12th-
15 13th to have reported to the Japanese Foreign Office
16 that 'an amicable settlement would probably be made
17 after the return of the investigators to Mukden.'"

18 I should like to point out again that
19 DOHIHARA was on his way at that time or shortly after
20 that time from Japan to return to Mukden.

21 Then continuing: "The Mukden correspondent
22 of the Nippon Dempo Service telegraphed a despatch
23 on September 12th stating that 'an amicable settlement
24 of the alleged murder of Captain Shintaro NAKAMURA
25 of the Japanese General Staff Office by soldiers of

the Chinese Reclamation Army Corps is in sight."

1 And quoting further from the same paragraph:
2 "It would seem that diplomatic negotiations for attain-
3 ing a solution of the NAKAMURA case were actually pro-
4 gressing favourably up to the night of September 18th."

5 THE PRESIDENT: Well, that is something you
6 might put to us in your summation. It hardly helps
7 on this question of whether we will admit the document
8 or not.

9 MR. WARREN: Your Honor --

10 THE PRESIDENT: It is all test of whether the
11 document has probative value and there are no rules
12 of evidence that bind us. Nevertheless, I think you
13 are developing your argument too far.

14 MR. WARREN: I am finished with my argument.
15 I have finished my argument except I want to make this
16 observation: apparently the Tribunal is not following
17 the basis of my argument. The prosecution is not
18 attempting to rebut defense evidence, the prosecution
19 is rebutting prosecution evidence and that isn't
20 rebuttal in my opinion and the document ought to go out
21 on that alone.

22 (Whereupon, Judge Hsiang approached
23 the lectern.)

24 THE PRESIDENT: We don't want to hear you,
25

Judge Hsiang.

By a majority the objections are overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Prosecution document 2981 will receive exhibit No. 3739.

(Whereupon, the document above referred to was marked prosecution exhibit No. 3739 and received in evidence.)

JUDGE HSIANG: I will now read exhibit 3739:

"From: Foreign Minister SHIDEHARA.

"To: Consul-General HAYASHI at Mukden.

"Head Office

"Despatched 5 September 1931, p.m.

"Telegram No. 182 (Code)

"Re Control of the activities of adventurers in connection with the NAKAMURA Incident.

"We have heard that Colonel ITAGAKI and others of the Kwantung Army at your place are exerting themselves in various activities recently with considerably ample funds and are manipulating Japanese adventurers in China and members of the 'Kokusui-Kai'; and that in view of the tardy progress of the negotiation regarding the NAKAMURA Incident, especially, they have decided on some concrete move around the middle of this month. We Hope that it is merely a rumour. However, in

1 consideration of the appearances of excitement on the
2 part of the despatched military authorities it would
3 be very regrettable from the point of the general
4 situation, if they ruin the position of the Empire by
5 behaving rashly, therefore, please take further deliber-
6 erate steps for controlling the activities of the RONIN
7 /T.N. adventurers/ and the like.

8 "We have conveyed the gist of this telegram
9 to the army also."

10 MR. WARREN: If the Tribunal please, at this
11 point the word "Ronin" which the translator's note in
12 there calls "adventurers" -- that has been called to
13 my attention that ronin means more or less an adventurer
14 without a boss or under an organized head, and I would
15 like to have that referred to the translation section
16 for a complete examination of the word "Ronin." It
17 may make a great difference.

18 THE PRESIDENT: We will refer it to the Language
19 Section.

20 JUDGE HSIANG: The prosecution will next
21 introduce IPS document 1767 A-1, being a telegram from
22 Consul General HAYASHI at Mukden to Foreign Minister
23 SHIDEHARA reporting the Japanese Army's preparations
24 at Fushun prior to the Mukden Incident. ITAGAKI
25 stated on page 30,349 of the record that he had heard

1 about it only after the outbreak of the Incident. This
2 document, however, will show that the activities in
3 Fushun were part of the long operational plan. There-
4 fore, this document would rebut the testimony of
5 ITAGAKI that he learned about it only afterwards.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 1767 A-1 will receive exhibit No. 3740

9 MR. MATTICE: I desired to object to the intro-
10 duction of this document.

11 THE PRESIDENT: Well, I paused before I ad-
12 mitted it, Mr. Mattice. Nobody moved to the lectern.
13 However, we will hear you.

14 MR. MATTICE: Well, the red light was still
15 burning.

16 THE PRESIDENT: Yes.
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1 MR. MATTICE: The objection, of course, would
2 be that this is not rebuttal. I will not repeat the
3 grounds which have been lengthily stated in respect to
4 that, but call the Tribunal's attention to the fact that
5 this is evidence of the character that the prosecution
6 put in in their case in chief, and this should have been
7 put in then.

8 So, I say it is not rebuttal evidence and it
9 is not justifiable as a matter of impeachment because
10 no foundation was laid. This document was not put to
11 the accused ITAGAKI while he was being cross-examined.

12 JUDGE HSIANG: On the 8th of October 1947, when
13 ITAGAKI was cross-examined, the facts were based on
14 this document in putting him questions. ITAGAKI then
15 denied the facts and foundation for introducing this
16 document was then laid.

17 THE PRESIDENT: Did you say the document was
18 expressly put to ITAGAKI, or merely the contents of the
19 document without revealing the document itself?
20

21 JUDGE HSIANG: On page 30,348 the question was
22 put to him in this way:

23 "Do you remember that as early as September 14
24 an emergency defense meeting was called at Fushun in
25 anticipation of something to happen?

"Answer: I should like to call your attention

1 to what has already been explained in this Court in
2 connection with the Fushun question. Are you asking
3 me about this?"

4 THE PRESIDENT: Why didn't you put the docu-
5 ment itself to him, if you had it? You appear to have
6 had it; at least GHQ had it as early as April last year.

7 JUDGE HSIANG: We introduce this document now
8 as a result of ITAGAKI's denial during cross-examination.

9 THE PRESIDENT: Yes, but ITAGAKI gave evidence
10 and you had this document. You were relying on it, yet
11 you didn't put it to him. Now you bring it up in re-
12 buttal. Frankly, we are out to limit the amount of
13 rebuttal evidence as much as we reasonably can, as far
14 as the interests of justice permit.

15 JUDGE HSIANG: During the time of the cross-
16 examination, questions were based upon the contents of
17 this document. Since ITAGAKI denied it, it was not shown
18 to him. We think that this is one of the vital points
19 in the case and we believe that it will be greatly
20 helpful to the Tribunal in finding out the true situa-
21 tion about the Mukden Incident.

22 THE PRESIDENT: By a majority the objection is
23 sustained and the document rejected.

24 (Whereupon, the document previous-
25 ly numbered 3740 was rejected.)

1 JUDGE HSIANG: The prosecution will now offer
2 IPS document No. 1767A-14, previously marked for
3 identification as exhibit No. 2406 on page 19,384.
4 This is a telegram from Consul General HAYASHI at Mukden
5 to Foreign Minister SHIDEHARA reporting the extent of
6 Japanese aid given to General Chang Hai-peng in exchange
7 for the latter's declaration of independence. Defense
8 witness TAKEDA denied on page 19,363 and page 19,373 of
9 the transcript that Chang was given aid by Japanese.
10 This was also denied by ITAGAKI on page 30,369.

11 "The present document is now tendered to con-
12 tradict the foregoing testimony, and foundation for
13 introducing this document was laid on page 19,365 when
14 it was stated, "It will in due course be tendered."

15 THE PRESIDENT: Mr. Mattice.

16 MR. MATTICE: This document is objected to on
17 behalf of the accused ITAGAKI for the same reasons and
18 upon the same grounds. The subject matter is evidence
19 which the prosecution should have put in, if they cared
20 to do so, when they were putting in their case, and it
21 is not a matter of impeachment for the reason stated to
22 the previous document, because no proper foundation was
23 laid.
24

25 It seems to me, if the Tribunal please, that
lawyers, whether they are with the prosecution or with

1 the defense in a case, ought to know and are supposed to
2 know how to lay the foundation for impeachment. It is
3 well known in the practice in the Anglo-Saxon courts, at
4 least, and here they seem, all the way along, to have
5 failed to lay the foundation in most of these instances.

6 THE PRESIDENT: We understand you to say that
7 this particular document itself, and not merely its
8 contents, was put to a defense witness.
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1 JUDGE HSIANG: Your Honor, on page
2 19,365, in the cross-examination of the witness
3 TAKEDA, Mr. Comyns Carr made the following state-
4 ment:

5 "Your Honor, I understand that the docu-
6 ment has not yet been made an exhibit but in view
7 of this evidence it will, in due course, be tendered
8 and I am giving the witness the opportunity of deal-
9 ing with it."

10 On that occasion the document was shown
11 to the witness.

12 THE PRESIDENT: By a majority the objec-
13 tion is overruled, and the document admitted on the
14 usual terms.

15 CLERK OF THE COURT: Prosecution document
16 1767A-14, now exhibit 2406 for identification only,
17 will be marked as received in evidence and will re-
18 tain the same exhibit number.

19 (Whereupon, prosecution exhibit
20 No. 2406, previously marked for identi-
21 fication, was received in evidence.)

22 JUDGE HSIANG: I will now read this exhibit.

23 "From Consul-General HAYASHI in Mukden to
24 Foreign Minister SHIDEHARA.

25 "Dispatched: Mukden, p. m. October 13, 1931.

"Received: a. m. October 14, 1931.

"Telegram No. 963 (Code),"

I will omit the first two sections.

"3. According to KIKUTAKE, Chief of the South Manchurian Railway's local office, he says that our army supplied Chang Waipeng of Taonon with 5,000 rifles in order to give him independence; that Chang, however, asked for further assistance to the extent of two hundred thousand yen as a war fund; that it is rumored that the South Manchurian Railway, in connection with the recent incident, will advance about three million yen of secret military fund, but that when this is realized, our army will probably lay out its plan with the above fund."

I omit the remainder of the document.

We propose to introduce IPS document 1767A-15, previously under IPS document 1767B, marked for identification as exhibit No. 2407, transcript page 19,384, which is another telegram between the same parties, bearing information of similar purport, that is, Japanese assistance to Chang Hai-peng.

THE PRESIDENT: Mr. Mattice.

1 MR. MATTICE: If your Honor please, on
2 behalf of the accused ITAGAKI, this document is also
3 objected to upon the grounds stated in respect to the
4 previous document.

5 JUDGE HSIANG: The foundation for intro-
6 ducing this document at this stage was similarly
7 laid as the previous document.

8 THE PRESIDENT: The same decision. Admitted
9 on the usual terms. The objection is overruled.

10 CLERK OF THE COURT: Prosecution document
11 1767B, now exhibit 2407 for identification only, will
12 be marked as received in evidence and will retain
13 the same exhibit number.

14 (Whereupon, prosecution exhibit
15 No. 2407, previously marked for identifica-
16 tion, was received in evidence.)
17

18 JUDGE HSIANG: I will now read exhibit
19 2407:

20 "From Consul General HAYASHI in Mukden to
21 Foreign Minister SHIDEHARA.

22 "Dispatched, Mukden, p. m., 17 Oct. 1931.

23 "Received, a. m. 18 Oct. 1931.

24 "Telegram No. 1013 (Code, very secret.)

25 "According to Hsieh Chieh-Shik (he had been
in Taonan since the end of September at the request of

1 Chang Hai-peng) who came back to Mukden on the 16th
2 from Taonan, he says that Chang Hai-peng telephoned
3 his family in Taonan from a station on Taonan-
4 Anganchi Railway on the morning of the 15th, telling
5 them that his entry into Tsitsihar would be a little
6 delayed because a bridge was destroyed on the way.
7 At any rate Hsieh said to me, 'there was a condition
8 that Chang Hai-peng was to be supplied with 10,000
9 rifles, 200,000 yuan in silver, field guns and planes
10 by a certain quarter for entering Heilungkiang
11 Province, declare the independence, and then proceed
12 with the restoration of the Monarchy. In reality,
13 however, he received only 3,000 rifles and 200,000
14 yuan in silver. Chang's troop strength is some
15 3,000 at present and although he is planning to
16 increase it to more than 5,000, training is insuffi-
17 cient.'
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1 "In my opinion, even if he succeeds in
2 occupying Tsitsihar peacefully, I cannot help but doubt
3 that he could maintain his position since there are
4 not a few soldiers in various parts in the province who
5 possess troop strength. It must be said that it would
6 be still more difficult to support Emperor Hsuantung
7 for the throne. Therefore, the success or failure of
8 Chang Hai-peng depends wholly upon the amount of support
9 given by a certain quarter. Chang wants me to endeavor
10 for him since he has no able person around him, but I
11 cannot be very enthusiastic about it. Etc.'

12 "Cable relayed to China, Peiping, Tsitsihar,
13 Harbin, Changchun, Tientsin, Kirin and Chengkiatun."

14 No. 5 on the order list will not be offered.
15 I will now go to No. 6 on the order list, and offer
16 IPS document No. 1767-A-18. This is a telegram from
17 Consul General HAYASHI to Foreign Minister INUKAI.
18 Defense witness KATAKURA denied, on page 19,009 to
19 19,010 of the transcript, that the Japanese Army
20 intervened or participated in the local administration.
21 This document will prove that the Japanese Army decided
22 to extend the enforcement of self-government system
23 in the area under the control of Yu Chih-shan and that
24 the chairman of the self-governing Guidance Committees
25 of the districts in that area were being appointed by

the army.

1 THE PRESIDENT: Was the document shown to
2 the witness?

3 JUDGE HSIANG: Your Honor, the document was
4 not shown to the witness, but it goes to the credibil-
5 ity of the witness.
6

7 THE PRESIDENT: Why wasn't it shown to him?

8 JUDGE HSIANG: When he denied the contents
9 of the document, we thought to introduce this document
10 at a later stage to contradict him.

11 THE PRESIDENT: Are you producing it now to
12 contradict the witness, or to confirm him?

13 JUDGE HSIANG: To contradict the witness,
14 impeach him.

15 THE PRESIDENT: Why didn't you show it to
16 him?

17 JUDGE HSIANG: The counsel who took care of
18 the cross-examination did not consider it necessary
19 then.
20

21 THE PRESIDENT: We have been rejecting
22 documents under those circumstances.

23 MR. MATTICE: For the purpose of the record,
24 the accused ITAGAKI objects to the introduction of
25 this document.

THE PRESIDENT: By a majority, the objection

is sustained and the document rejected.

1 JUDGE HSIANG: Next, the prosecution will
2 introduce IPS document No. 1767-A-19, being a telegram
3 from Acting Consul General MORISHIMA at Mukden to
4 Foreign Minister YOSHIZAWA. This is to rebut the
5 testimony of defense witness KATAKURA that the Kwantung
6 Army did not intervene or participate in the affairs
7 of the local administration, page 19,009, and also the
8 testimony of ITAGAKI that the formation of the new
9 state was the desire of the people, page 30,280. This
10 document will, however, show that all information
11 about the formation of the new state emanated from
12 the army and that ITAGAKI took an active part in the
13 matter.
14

15 MR. MATTICE: This document is objected
16 to on behalf of the accused ITAGAKI for the reasons
17 and upon the grounds previously stated, that this
18 document was not put to the witness.

19 THE PRESIDENT: The judges will confer.

20 MR. BROOKS: If the Tribunal please--

21 THE PRESIDENT: We will resume our seats
22 at the conclusion of the conference. I am hearing
23 nothing.
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(Whereupon, at 1015, a recess
was taken until 1110, after which the
proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: The Tribunal has decided to
3 receive any evidence tendered by the prosecution which
4 in the judgment of the Tribunal has probative value and
5 is of importance, but the defense may apply to tender
6 evidence in answer to the prosecution's further evidence
7 and each application will be considered on its merits.

8 Perhaps the prosecution will revise their proofs
9 of documents with a view to seeing whether they are
10 really important and will discard those which they
11 think are not important.

12 Captain Brooks.

13 MR. BROOKS: In the interest of saving time and
14 making objections, do your Honors by your ruling mean
15 that the foundation ordinarily required for impeachment
16 evidence will not be required -- will not be considered
17 as an objection?

18 THE PRESIDENT: There will be only two tests
19 of any evidence offered: Has it probative value? Is it
20 important?

21 MR. BROOKS: Then we may take it that it is
22 not a question of whether it is rebuttal or impeachment;
23 that it is a reopening of the case in chief entirely?

24 THE PRESIDENT: My statement does not admit of
25

1 any further clarification; it is as clear as day. Two
2 simple tests: Has the evidence offered probative value?
3 Is it important?

4 It is a majority decision.

5 MR. BROOKS: For the record I wish to enter an
6 objection on behalf of Generals KOISO and MINAMI to the
7 test and rule laid down in that in their cases we have
8 been prevented from offering evidence of a general nature
9 because we have been said to have been foreclosed since
10 we were on individual phases, and this is allowing the
11 prosecution, in my submission, an unfair advantage in
12 putting in general evidence when the defense have been
13 prevented from doing it not too far in the distance to
14 have it pointed out on the record.

15 THE PRESIDENT: The defense, as I said, may
16 apply to adduce evidence in answer to the further
17 evidence given by the prosecution. The decision cannot
18 be unfair to the defense, but it may prolong the trial.
19 That largely rests with the prosecution.

20 MR. BROOKS: I would wish to make an applica-
21 tion, not only to meet this evidence, if your Honors
22 please, but also to make an application to put in evi-
23 dence of equal value on the same basis, of a general
24 nature, which was offered and rejected before because
25 it was of a general nature alone and not because it did

not have probative value and was not important.

1 THE PRESIDENT: Colonel Warren.

2 MR. WARREN: If the Tribunal please, the Tri-
3 bunal's ruling has permitted the prosecution to the
4 full extent of the word and the meaning to reopen its
5 case.

6 THE PRESIDENT: We do not want any discussion
7 on what it means.

8 MR. WARREN: Yes, sir.

9 THE PRESIDENT: Each man is entitled to his own
10 opinion as to what it means, but not to express that
11 opinion here. Nothing is gained by allowing you to
12 express those views. The decision stands.

13 Now, Colonel Warren, we will hear no further
14 discussion on the decision. There is nothing to be
15 clarified so far as I can judge.

16 MR. WARREN: Not at all, sir. I have not asked
17 for a clarification. I want to talk for the record.
18 We are going to write, one of these times, a brief of
19 appeal for a review of this case, and I have a right
20 to also state our position. That is what I want to do.
21 I want to make a request of this Tribunal to put us also
22 in the same position as you have put the prosecution,
23 which it is our opinion has not been done. Until you hear
24 me on what I have to say, you cannot prejudge me on that
25 matter.

1 THE PRESIDENT: "We won't allow you to dis-
2 cuss our decision, and it is unnecessary for you to
3 say anything further for the purposes of the record.

4 MR. WARREN: Am I to understand, sir, that I
5 cannot ask this Tribunal to require the prosecution
6 to reopen their case and proceed in that manner, and
7 permit us to proceed on the same premise and to
8 restore to us the rights which we feel we have been
9 deprived of? If I cannot ask it I won't, and in lieu
10 thereof I ask for a blanket objection, because there
11 is no such thing as rebuttal and we had a right to
12 assume that there would be rebuttal, because the Court
13 indicated that. Now there is no such thing as rebuttal.

14 THE PRESIDENT: Rebuttal would not be the
15 right term to apply to the further evidence, I agree.
16 If there is any comfort to you in my statement of the
17 fact, you may have it.

18 MR. WARREN: There is. Thank you, sir.

19 MR. CUNNINGHAM: Your Honor, may I say we
20 have not been heard on this matter? We had no intima-
21 tion that the Court might bring in a rule of this nature.
22 Now, I have only one observation of a very serious
23 difficulty which this ruling puts me under that does
24 not apply to the others, which I think the Court should
25 have considered before it made such a blanket ruling.

1 THE PRESIDENT: If the prosecution bring out
2 any further evidence against the accused OSHIMA, we
3 will hear you fully, Mr. Cunningham.

4 Mr. Logan.

5 MR. LOGAN: If the Tribunal please, I didn't
6 know that such an important matter was under consider-
7 ation by the Tribunal when it went out, and I had no
8 opportunity to express any opinion or advance any
9 argument either in support or in opposition to any
10 such ruling.

11 I would like to point out that if probative
12 value and the importance of the evidence were to be the
13 test, the Tribunal is departing from the specific
14 powers which it has under the Charter.

15 THE PRESIDENT: The decision stands, Mr. Logan.
16 Do I rightly understand that you are attempting to
17 discuss the merits of our decision?

18 MR. LOGAN: That is right.

19 THE PRESIDENT: Well, we cannot permit you to
20 do so.

21 MR. LOGAN: I must abide by your decision, but
22 I must say this is the first court I have practised in
23 where a decision was handed down and counsel was not
24 permitted to state his views on it.

25 THE PRESIDENT: The Charter says we are to

1 do things that are not done in other courts if we see
2 fit. Rules of procedure are set aside if we see fit.
3 So, too, rules of evidence.

4 MR. LOGAN: That being so, if the Tribunal
5 please, may I then ask the Tribunal to rule that I
6 be permitted to state objections which I have to the
7 decision which the Tribunal has just announced, which
8 I didn't have before it was announced?

9 THE PRESIDENT: It is sufficient that we
10 know you object and that a record of that fact is
11 made. The details of your objection will not help us.

12 MR. LOGAN: I consider it my duty as an
13 officer of the court to give the Tribunal whatever
14 assistance I may be able to give in a small way.

15 THE PRESIDENT: That is appreciated, Mr. Logan,
16 but do not attempt to continue this discussion. We
17 must keep order in this court. Our decisions arrived
18 at must be respected.

19 MR. LOGAN: I am trying in an orderly way,
20 if the Tribunal please, to present something, and I
21 state that I have been deprived of the opportunity to
22 present it because the decision was made before any of
23 the defense attorneys were heard on it.

24 THE PRESIDENT: That has been said several
25 times. That will appear in the record. There is no

1 need to repeat it again.

2 MR. LOGAN: Well, you refuse to hear me
3 further then?

4 THE PRESIDENT: Yes.

5 MR. LOGAN: May I have an exception to that?

6 THE PRESIDENT: You may.

7 MR. WARREN: I don't desire to discuss that.
8 There is another question though, another proposition,
9 I do want to bring up at this time, your Honor.

10 The defense counsel through a committee
11 agreed with the Tribunal with reference to summations.
12 Under this ruling, so far as I am concerned with
13 reference to the accused DOHIHARA and HIRANUMA, I
14 ask that we be relieved from that agreement because
15 this completely changes the complexion of the thing,
16 and I think I should call it to the Tribunal's atten-
17 tion at this time and ask that we be relieved from it.

18 THE PRESIDENT: We do not make bargains with
19 the parties. We hold you to no agreement; we have
20 none with you.

21 MR. WARREN: Thank you, sir.

22 THE PRESIDENT: Mr. Mattice.

23 MR. MATTICE: Getting back now, if the Tribunal
24 please, to document 1767-A-19, I take it then we are
25 limited in the matter of objection to this as well as

1 other documents. I desire only to call attention to
2 the fact that this document, because on its face it
3 appears to be pure hearsay, has no probative value.

4 THE PRESIDENT: By a majority the objection
5 is sustained. and the document rejected.

6 JUDGE HSIANG: The prosecution proposes to
7 offer in evidence IPS document No. 1767-A-20. This is
8 a telegram from Acting Consul General MORISHIMA at
9 Mukden to Foreign Minister YOSHIZAWA. This document
10 shows that contrary to defense witness KATAKURA's
11 statement on page 19,009 and defendant ITAGAKI's
12 testimony on page 30,280--

13 THE PRESIDENT: Mr. Mattice.

14 JUDGE HSIANG (Continuing): This testimony
15 shows that the formation of the new state was the
16 result of the fixed policy of the Japanese military,
17 and that no matter what policy was decided upon by the
18 Japanese Government, there would be no way to stem the
19 trend. In our submission this document has probative
20 value and is important.

21 MR. MATTICE: On behalf of the accused ITAGAKI
22 the introduction of this document is objected to--

23 THE PRESIDENT: The objection is sustained
24 and the document rejected.

25 JUDGE HSIANG: The prosecution next offers in

evidence IPS document No. 1767-A-22, being a telegram
1 from Consul General HAYASHI in Mukden to Foreign
2 Minister SHIDEHARA reporting on the monopolization
3 of opium and the issuance of lottery tickets by the
4 Municipal Administrative Office at Mukden of which
5 DOHIHARA was then the head. The introduction of this
6 document is tendered to rebut ITAGAKI's testimony on
7 pages 30,362 to 30,363 of the transcript which denied
8 the facts as contained in the present document.

9 THE PRESIDENT: Colonel Warren.

10 MR. WARREN: If the Tribunal please, we
11 wish to object--

12 THE PRESIDENT: Red light.

13 JUDGE HSIANG: Part of this document was
14 read to the defendant ITAGAKI during cross-examination.
15 The foundation was properly laid. On page 30,362 the
16 question was put to ITAGAKI, saying: "Q Now, do you
17 know, Mr. ITAGAKI, that in order to raise funds the
18 Municipal Administration under DOHIHARA had planned
19 the monopoly of opium and the issuance of lottery
20 tickets? A. No, I do not know." Further on, on
21 page 30,363 a question was put to ITAGAKI to refresh
22 his mind and a part of this telegram was read to him.
23 This telegram concerns a very serious and important
24 matter and is a document from a reliable source, coming
25

from the Government. We urge for its admission.

1 MR. WARREN: If the Tribunal please, we are
2 not concerned with the impeachment question of the
3 witness ITAGAKI. Undoubtedly, this is directed to
4 DOHIHARA because the prosecution said so. My first
5 point is that it couldn't apply because on the after-
6 noon of October 13, 1931 DOHIHARA was the mayor of
7 Mukden and not the head of the Special Service organ-
8 ization. It doesn't tend to prove or disprove anything
9 in this case for that reason. Number two, it is un-
10 questionably hearsay.

11
12 JUDGE HSIANG: Your Honor, I answer on two
13 points. First--

14 THE PRESIDENT: We do not want to hear you.
15 By a majority the objections are overruled and the
16 document admitted on the usual terms.

17 CLERK OF THE COURT: Prosecution document
18 1767-A-22 will receive exhibit No. 3740.

19 (Whereupon, the document above
20 referred to was marked prosecution exhibit
21 No. 3740 and received in evidence.)
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JUDGE HSIANG: I will now read exhibit 3740:

1 "From Consul General HAYASHI in Mukden to
2 Foreign Minister SHIDEHARA.

3 "Mukden dispatch -- afternoon of 13 October
4 1931.

5 "Received, afternoon, October 13th, 1931.

6 "Telegram No. 955 (Code, Top Secret)

7 "According to reliable sources we are noti-
8 fied that the Municipal Administrative Office has
9 planned the monopolization of the opium and the issue
10 of the lottery tickets for the purpose of raising
11 their funds, and has asked the Headquarters of the
12 Army for their approval. We are also informed that
13 though the Headquarters of the Army had no objections
14 to the plans, they instructed the office to state the
15 stipulations clearly and get the approval of the Head-
16 quarters before the plans are put in operation, and
17 also to report the stipulations to the Consulate and
18 the Police Station. Not only are the monopolization
19 of opium and the issuing of the lottery tickets natur-
20 ally unfavorable from the viewpoint of international
21 relations and so forth, in general, but they are the
22 materialization of a part of the plans of the Army,
23 marked SECRET No. 781 of October 2nd. Therefore, re-
24 garding this matter, we ask you to call upon the top
25

1 army to immediately check this movement, and in con-
2 sideration of the delicate situation kindly take
3 special care to preserve absolute secrecy from the
4 army as to the receipt of this telegram and the con-
5 tents of the above-mentioned official letter."

6 Judge Nyi will continue to present documents
7 for the prosecution.

8 THE PRESIDENT: Judge Nyi.

9 JUDGE NYI: May it please the Tribunal, we
10 next offer IPS document No. 642-B, being a map show-
11 ing the extent of control assumed by the Mukden
12 Special Service Organ of which DOHIHARA was the chief.
13 The introduction of this document will rebut the
14 defense witness AIZAWA's testimony on page 28,625-26
15 of the transcript where the Special Service Organ at
16 Mukden had no connection whatsoever with Special
17 Service Agencies elsewhere except the branch at
18 Dairen. However, the remarks in the map show clearly
19 that the Mukden Special Service Organ took charge
20 of intelligence under Special Service Agencies in
21 Chahar, North China and lower Yangtsu.

22 THE PRESIDENT: Colonel Warren.

23 JUDGE NYI: We offer the map for identifi-
24 cation and will then offer the remarks into evidence,
25 the remarks in this map as an excerpt. What we want

1 to put in evidence is the remarks on the map which
2 are translated into English.

3 MR. WARREN: Your Honor, we haven't seen any
4 map. There is no date to indicate as to when this
5 document is supposed to apply, if it does apply, and
6 the whole thing is unintelligible to us. We couldn't
7 make any intelligent objection if we wanted to. We
8 ask that the rule of the Tribunal be complied with by
9 the prosecution until such time as we can make an
10 intelligent answer to this. Incidentally, the prose-
11 cution seems to be liberally supplied with the maps,
12 but I know of no defense counsel who has one.

13 JUDGE NYI: As I have already stated, the
14 prosecution is offering the remarks on the map which
15 are of assistance to the Tribunal in reaching a con-
16 clusion of fact. Not the map itself, the details of
17 the map; for instance, the localities where the
18 secret service agencies were located and the dates
19 when the map was made are all set in the remarks.

20 MR. WARREN: Your Honor, I should like to
21 call attention to the Tribunal of this in the remark,
22 paragraph 1: "The Mukden Special Service Agency shall,
23 besides the map, take charge of the intelligence con-
24 cerning the zones under the charge of the various
25 special service agencies in Chahar." We couldn't

1 tell what it means. Therefore, we object to it unless
2 the whole document is offered and the rule of the Tri-
3 bunal is complied with.

4 JUDGE NYI: That is the very reason why we
5 are not offering the map itself, because the map does
6 not cover the whole area of DOHIHARA's activities.
7 But the remarks in the map do so.

8 MR. WARREN: Your Honor, the remarks in the
9 certificate of authenticity do not even show where
10 this map came from.

11 JUDGE NYI: Your Honor, this map was compiled
12 by the by the Army General Staff, was found in the
13 files of the First Demobilization Bureau. It was
14 clearly stated in the certificate.

15 MR. WARREN: It also says, "Location of
16 document in the archives and files" blank. The date
17 is blank, too, incidentally. We will not argue
18 further, your Honor.

19 THE PRESIDENT: We will adjourn until half-
20 past one.

21 (Whereupon, at 1200, a recess was
22 taken.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Judge Nyi.

4 JUDGE NYI: May it please the Tribunal, with
5 regard to the date when the map was made and the organ-
6 ization which kept this map, I can -- I think we can
7 take for granted that they were all set out in the
8 remarks because the certificate is a printed form and
9 was given to the officer for signature. As he saw that
10 they were all set out in the remarks he might not find
11 it necessary to put them in. As a map is different
12 from a telegram or letter which would require exact
13 dating, we will take it that the date was July 30, 1933,
14 and the organization which kept it was the Chief of
15 General Staff.

16 If your Honors are satisfied with my explen-
17 ation, I shall still tender it. If your Honors think
18 that as far as this particular point is concerned it
19 needs further clarification we shall withdraw it for the
20 time being and we will have it filled -- items filled
21 and tender it at a later time.

22 THE PRESIDENT: You may withdraw it if you
23 wish but I don't know that if you retender it again
24 the result will be any different. Do you withdraw the
25 document?

1 JUDGE NYI: Your Honor, if we re-enter it
2 we will have the date and the organization which kept
3 this document filled.

4 THE PRESIDENT: I don't think it would make
5 any difference.

6 By a majority the objections are sustained
7 and the document rejected.

8 JUDGE NYI: We shall next introduce IPS docu-
9 ment No. 2570-B, previously marked for identification
10 as exhibit 3457 on page 33,202 of the transcript. It
11 contains a series of decisions by the Five Ministers'
12 Conference between July the 8th and September the 9th,
13 1938. They cover the important policies of the Japanese
14 Government with regard to diplomatic, military and
15 political matters which are pertinent to the issues in
16 this case.

17 ITAGAKI when cross-examined refused to identify
18 this document, reference page 30,415 of the transcript
19 and the following. When questioned on the basis of
20 this document he answered in a general way that he
21 could not remember, but when asked about the specific
22 matter contained in these decisions he either answered
23 that it was impossible or that it wasn't so, reference
24 pages 30,421 to 30,430 of the transcript.

25 Again when MUTO was cross-examined he denied

1 that he was a member of the Secret Liaison Committee
2 with reference to Five Ministers -- with the Conference
3 of Five Ministers even when confronted with this docu-
4 ment, reference pages 33,197 to 8 of the transcript,
5 but No. 16 of this document will show that the Chief
6 of the Military Affairs Bureau, which post MUTO held,
7 was a member of the Liaison Committee which was designated
8 a secret committee belonging to the Conference of Five
9 Ministers.

10 I may add that IPS document 1685-C, which Mr.
11 Comyns Carr intended to introduce yesterday embodies
12 six cabinet decisions which correspond in substance to
13 Nos. 1, 2, 3, 5, 6, 12 and 13 in this document. He
14 withdrew IPS document 1685-C principally because the
15 whole of the contents of his document was included in
16 the document which I am now tendering.

17 THE PRESIDENT: Mr. Logan.

18 MR. LOGAN: If the Tribunal please, in the first
19 place the prosecution has stated that this document
20 contains policies of the Japanese Government. It appears
21 on its face that it is matters decided at the Five
22 Ministers' Conference. There is nothing in the document
23 which indicates it was ever submitted to the cabinet
24 and approved by the cabinet.

25 Prosecutor also stated that the first six

1 of the decisions were embodied in a document which was
2 withdrawn yesterday, 257 -- excuse me, 1685-C. While
3 there was a preference expressed yesterday for the with-
4 drawal of the document, actually the objections to it
5 were sustained on page 37,305 of the record. In view
6 of the Tribunal's statement --

7 THE PRESIDENT: It wasn't withdrawn.

8 MR. LOGAN: The prosecution expressed a preference
9 to withdraw it as I stated, and the President said,
10 "The objections to the document are sustained and the
11 document is rejected," on page 37,305 of the record.

12 Now, if the Tribunal please, under the ruling
13 yesterday that they were operating under rebuttal
14 evidence, I assumed that any document offered would
15 be in evidence only against the person to which it was
16 offered. Now if we are on a reopening of the prosecu-
17 tion's case am I to understand that every document
18 offered is offered against all the accused?

19 THE PRESIDENT: I don't profess to speak for
20 the prosecution but until they tell me the contrary
21 I would assume it is offered against them all on the
22 general conspiracy charge.

23 MR. LOGAN: That being so, if the Tribunal
24 please, then I object to this document on the ground
25 that it was not presented to the accused KIDO when he

1 took the stand. He had no opportunity to either affirm
2 or deny any of the matters set forth therein and it
3 would be decidedly unfair for the prosecution to offer
4 a document at this time which wasn't shown to him but
5 which was shown to other accused and then for the
6 Tribunal to rule that this document, if it is accepted
7 in evidence, should be held against KIDO. And this
8 same proposition would apply to other defendants in
9 similar cases.

10 And, furthermore, I also object to the recep-
11 tion of this document at this time on the ground that
12 the prosecution hasn't applied to reopen its case and
13 the rules under which we are now operating are much
14 broader than those for which the prosecution asked when
15 they asked to introduce rebuttal evidence.

16 I also wish to specifically object to this
17 document on behalf of the accused KIDO as it is not
18 important in so far as any accusations against him are
19 concerned and it has no probative value.

20 And furthermore, that on the reopening of the
21 case exceptionally good grounds must be shown and there
22 has been no good grounds showing why the case should
23 be reopened as against KIDO.
24
25

THE PRESIDENT: Mr. Mattice.

1 MR. MATTICE: On behalf of the accused
2 ITAGAKI an additional ground of objection to this docu-
3 ment, that it has no probative value for the reason
4 that it appears from the evidence already adduced in
5 this case that at these Five Ministers Conferences
6 no minutes were taken. That fact was developed by
7 interrogation of the accused ITAGAKI by the President
8 of this Tribunal. And such being the case, and it ap-
9 pearing on the face of this document that it must have
10 been compiled by someone who got his information, or
11 dreamed up his information, in some other way than
12 from observation of what occurred at the conference.
13 On its face and from the various several dates appear-
14 ing in the document it is quite apparent that the per-
15 son who compiled it did so a long time after the dates
16 of the several meetings of the Five Ministers Confer-
17 ence.
18

19 THE PRESIDENT: Mr. Cole.

20 MR. COLE: If the Tribunal please, I object
21 to the introduction of this document on behalf of the
22 accused MUTO, subscribing in full to the arguments
23 which have already been fully given. One point in
24 addition, and that is that this document was not pre-
25 sented either to General MUTO at the time of his very

full cross-examination.

1 (Whereupon, Judge Nyi approached the
2 lectern.)

3 THE PRESIDENT: We don't want to hear you,
4 Judge Nyi.

5 By a majority, the objections are overruled
6 and the document admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 2570-B, now exhibit 3457 for identification only, will
9 be marked as received in evidence, and will retain the
10 same exhibit number.

11 (Whereupon, exhibit No. 3457,
12 previously marked for identification, was
13 received in evidence.)

14 JUDGE NYI: I shall not read the first page
15 which is a Table of Contents; I shall begin with page 2.

16 THE PRESIDENT: Must you read it all do you
17 think?

18 JUDGE NYI: We could choose to omit some parts
19 which we think not necessary when the time comes. In
20 that case I shall omit No. 1, I shall begin with No. 2.

21 "No. 2 - The Measures to be taken in the
22 Case of Surrender of the Present Central Government of
23 China. (Decided 8 July 1938)

24 "1. The Policy
25

1 "In case of surrender of the Central Govern-
2 ment of China, Japan will regard it as one of the re-
3 gimes and treat it according to the 'Must be made to
4 join the newly established Central Government of China'
5 policy decided upon by the Imperial Conference.

6 "2. The Outline

7 "I. Japan shall firmly adhere to the decided
8 policy for the solution of the Incident and shall not
9 try to adjust the general relations between Japan
10 and China in negotiation with the present Central Gov-
11 ernment of China.

12 "II. In case the present Central Government
13 of China surrenders and accepts the third condition,
14 stated later, it shall either be considered as a friend-
15 ly regime and will be permitted to join the newly estab-
16 lished Central Government, or be made to establish
17 another new central government in cooperation with
18 various existing pro-Japanese regimes.

19 "The merger with the newly established Central
20 Government, or the establishment of a new central
21 government shall be undertaken chiefly by the Chinese,
22 the internal assistance to be given by Japan.

23 "3. Conditions for the recognition of the
24 Surrender of the Present Central Government of China.

25 "I. The merger with or taking part in the

establishment of the new Central Government of China.

1 "II. The change of title as well as the
2 reorganization of the former National Government fol-
3 lowing the above mentioned measure.

4 "III. The abolition of anti-Japanese, pro-
5 Communistic policy and the adoption of pro-Japanese-
6 Manchukuo and anti-Communistic policy.

7 "IV. Retiring from public life of Chiang
8 Kai-shek.

9 "4. Suspension of Hostilities.

10 "The suspension of hostilities shall not be
11 taken up unless we have satisfied ourselves with the
12 facts of surrender of the present Central Government
13 of China.

14 "However, in the case of negotiating the cessa-
15 tion of hostilities, the conditions shall be considered
16 separately.

17 "No. 3 - The Measures to be taken in the
18 Case where the Present Central Government of China
19 does not Surrender. (Decided 8 July 1938)

20 "1. The Policy.

21 "Japan shall control her national power more
22 rigidly than ever before, and her whole strength in
23 home administration, foreign relations, financial
24 tactics and propaganda shall be concentrated upon
25

1 bringing about the destruction or surrender of the
2 present Central Government of China. At the same
3 time, the various administrative measures necessary
4 for a long term warfare shall be intensified in order
5 to actually realize the wartime condition spiritually
6 and materially.

7 "2: The Outline.

8 "I. Measures to be taken before occupying
9 strategic points.

10 "(1) We must direct positive war operations
11 without break, with the aim to occupy strategic points
12 for controlling the general situation of China so as
13 to cause the self-destruction of the present Central
14 Government of China and their abandonment of fighting
15 spirit, because of their repeated defeats and especially
16 the loss of their midland.

17 "(2) In accordance with the development of
18 war operations, the pro-Japanese and anti-Comintern
19 influences should be fostered through strengthening
20 tactics upon administration, finance, foreign rela-
21 tions and thoughts. It should be aimed to break up
22 the interior of the anti-Japanese influence and to
23 bring about an atmosphere desirous for peace as well
24 as the ruin of its financial and economic basis, so
25 that the present Central Government of China might split

1 and collapse, or at lease be reduced to a mere local
2 regime at the earliest possible time.

3 "The above-mentioned policies shall be car-
4 ried out not only by Japan herself but also by guidance
5 of the various pro-Japanese regimes of China and others
6 in the background.

7 "(3) The various pro-Japanese regimes shall be
8 enlarged and strengthened. They shall be also incor-
9 porated into one regime as early as possible. We should
10 make it really worthy of the name of a Central Chinese
11 Government so that it may be inevitably recognized
12 at home and abroad as the new government de facto which
13 which will replace the present Central Government of
14 China.
15

16 "The recognition of the new Central Government
17 of China by Japan depends solely upon the situation,
18 but it must be done as soon as possible when the new
19 Central Government has been completed in substance.

20 "(4) While we will highly respect the rights
21 and interests of the third powers, and avoid troubles
22 with them, we should adopt powerful and straightforward
23 measures to settle the Incident so that they may ac-
24 tually understand our policies toward China.
25

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1 Then they will be compelled to support our attitude
1 in order to protect and increase their vested rights
2 and interests, and consequently the present Central
3 Government of China will be isolated.

4 "II The measures to be taken after occupying
5 the strategic points.

6 "In case the present Central Government of
7 China should not surrender even after we occupy the
8 strategic points, we should not be impatient so as to
9 resort to force to settle the Incident, but make efforts
10 to enlarge and strengthen the new Central Government,
11 and at the same time should attempt the downfall of
12 the present Central Government of China chiefly by
13 tactics, increasing pressure upon it by political,
14 economic and ideological measures.

15
16 "III The way for the practice of the above
17 shall be planned and decided upon separately.

18 "No. 4 - STRATEGY TOWARD CHINA IN CONFORMITY
19 WITH THE CURRENT SITUATION (Decided 8 July 1938).

20 "1. The Policy.

21 "In order to break down the present Central
22 Chinese Government and bring about Chiang Kai-shek's
23 fall from power, simultaneously with the destruction
24 of the enemy's fighting power, the plans now being
25 put into effect shall be strengthened, and the essentials

for this purpose are as follows:

"Method of Execution:

"I By engaging persons of the first rank in China, we pave the way for the establishment of a new strong administrative power concurrently with the weakening of the fighting spirit of the Chinese people.

"II By expediting the conciliation and submission of the irregular forces, we plan to disrupt and weaken the fighting power of the enemy.

"III By utilizing and controlling the authoritative anti-Chiang Kai-shek elements, we shall establish in our enemy's midst an anti-Chiang Kai-shek, anti-Comintern and anti-war government.

"IV By promoting the Mohammedans movement we shall create an anti-Comintern zone operated by Mohammedans themselves in the northwestern region.

"(amended on 22 July)

"V By confiscating Chinese funds abroad etc., we shall cause the present Central Chinese Government to destroy themselves financially.

"VI We shall spread the necessary undercover propaganda to make easier the execution of all the above measures.

"Note: Investigations in respect of Item V

above are still in progress.

"No. 5 - THE GUIDING POLICY FOR THE ESTABLISHMENT OF THE NEW CENTRAL GOVERNMENT OF CHINA
(Decided 15 July 1938).

"1. The Policy.

"I The new Central Government of China shall not be confined to the mere party concerned, on the part of China, in settling the Incident, but shall be made the government of China, so that Japan and China will sweep away all the frictions in their past relationships and establish the foundation of a friendly relationship between them from a broadminded viewpoint.

"II Though the establishment of the new Central Government of China shall be undertaken mainly by the Chinese, it shall be internally assisted by Japan. The principle of the collaboration of individual local governments shall be adopted to their government form.

"2. The Plan for the Establishment.

"I A Joint Commission shall be established as soon as possible through the cooperation between the Provisional Government and the Restoration Government, to be joined later by the Mongolian and Hsiang-Kiang Joint Commission. Then we should guide this regime so as to grow into a real central government

1 by gradually absorbing various other influences or
2 collaborating with them.

3 "II The new Central Government shall not
4 be established until after the fall of Hankow, with
5 the Chiang Kai-shek regime reduced to a mere local
6 government or until the reformation of the present
7 Central Government is brought about by Chiang Kai-shek's
8 retirement from public office.

9 "III In case the split or reformation in
10 the Chiang Kai-shek regime does not take place even
11 after the fall of Hankow, we should establish a new
12 central government by putting existing governments
13 together.

14 "IV In case the Chiang Kai-shek regime is
15 broken up or reformed, and should a pro-Japanese govern-
16 ment turn up, we would make it a factor of the central
17 government system and proceed to set up a central
18 government.

19 "V It is expected that the date for our
20 recognition of the new Central Government would be
21 when the reformed (split) government as in Par. IV
22 could take charge of the suspension of hostilities, or
23 when the united government as in Par. III has grown
24 to be a central government of real efficiency.

25 "VI Adjustment of the relations between

1 Japan and China in connection with our control of
2 the establishment of the new Central Government of
3 China, shall be done on the following basis, and its
4 concrete matters shall be decided separately.

5 "(1) Basic matters to be adjusted and agreed
6 upon for setting up the new relations between Japan
7 and China shall be generally as follows:

8 "(A) Utilization and development of natural
9 resources in North China.

10 "(B) The recognition of the highly-cooperative
11 zones by Japan and China in North China and the lower
12 Yangtze River. The establishment of a special position
13 against the Soviet Union in Mongolian-Hsing-Kiang
14 area. The establishment of a special position on the
15 various islands along the coast of South China.

16 "(C) The establishment of the general policy
17 for the collaboration among Japan, Manchukuo and China
18 based upon reciprocity, particularly on neighborly
19 friendship and goodwill, anti-Comintern and joint-
20 defense and economic cooperation. In order to attain
21 the above objectives, Japan will give internal guidance
22 during a certain period.

23 "(2) The basis for the internal guidance is
24 given on attached sheet No. 1, captioned as 'The General
25 Plan for the Internal Guidance of the Government of

China.'" 1

2 THE PRESIDENT: Judge Nyi, much of this need
3 not be read. Wouldn't you pick out the more important
4 parts?

5 JUDGE NYI: In compliance to your Honor's
6 instruction, we will omit reading the rest of this
7 number, being No. 5, and we will also omit No. 6,
8 beginning on page 10. We will read No. 7 on page 11.

9 "No. 7 - DIPLOMATIC POLICY TOWARD BRITAIN FOR
10 THE TIME BEING (Decided July 8, 1938).

11 "1. In order to cause Britain to give up
12 her policy of aiding Chiang, it is necessary to make
13 her understand through facts the just attitude of the
14 Empire.

15 "2. As for the matters pending up to the
16 present, we will investigate them concretely and settle
17 same rapidly one after another according to the above-
18 mentioned plan.

19 "No. 8 - ATTITUDE TOWARD PROPOSALS OF THE
20 BRITISH AND THE GERMAN AMBASSADOR FOR PEACE MEDIATION
21 (Decided July 12, 1938).

22 "British Ambassador:

23 "To first decline in a roundabout way, but
24 not sever the connection. 'Because sincerity is not
25 recognized, we will contemplate for a while.'

"German Ambassador:

"To first hear what he says."

We will skip No. 9 and come to No. 10 on
page 12:

"No. 10 - PROCEDURE TAKEN IN CONNECTION WITH
THE SETTLEMENT OF THE CHANG KU-FENG INCIDENT (Decided
July 22, 1938).

"Have made preparations for emergencies.

"The use of the prepared military power is
to be carried out by the Imperial Order after negotiation
among the authorities concerned."

We will skip No. 11 and come to No. 12:

"No. 12 - SPECIAL COMMISSION ON CHINESE
AFFAIRS (Decided July 26, 1938).

"(1) The Special Commission for China belongs
to the Five Ministers' Council and is an executive organ
exclusively for working out important strategems against
China and establishing the new Chinese Central Govern-
ment in accordance with the decision of the council.

"(2) Every organ at the actual places
concerned with the above-mentioned business is directed
by the Special Commission for China in connection with
the said business.

"(3) The Army and Navy Ministers will be in
charge of the liaison between the Special Commission

for China and the Imperial Headquarters.

1 "No. 13 - COMMENTARY ON THE SPECIAL COMMISSION
2 ON CHINESE AFFAIRS (Decided July 29, 1938).

3 "(1) Composition of the Special Commission
4 for China in Par. 1. The Commission is understood as
5 an organ under the leadership of DOIHARA, TSUDA and
6 BANZAI.

7 "(2) The important strategems against China
8 in Par. 1 are understood as political and economic
9 strategies which are not directly connected with
10 military operations.

11 "(3) Interpretation of Par. 2.

12 "It is understood that the Supreme Command
13 organ is not included in the local organs. However,
14 if there is the necessity of adjusting a certain stra-
15 tegem of the Supreme Command organ with that of the
16 Commission, both will be adjusted through their channels
17 of subordination as mentioned in Par. 3."

18 We shall omit No. 14 and come to No. 15 on
19 the same page.
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1 "NO. 15 - OUTLINE FOR THE ESTABLISHMENT OF
2 A JOINT COMMITTEE (Decided September 9, 1938).

3 "CONTENTS.

4 "I. The Policy.

5 "II. Outline for the Establishment of the
6 Joint Committee.

7 "III. The Organization and the Powers of
8 the Joint Committee.

9 "IV. Outline for Guidance of the Joint
10 Committee.

11 "I. The Policy.

12 "To establish a Joint Committee in accordance
13 with the Policy to Guide the Establishment of the New
14 Central Government of China agreed upon at the Con-
15 ference of the Five Ministers, 15 July 1938 /Showa
16 13.

17 "II. Outline for the Establishment of the
18 Joint Committee.

19 "1. The establishment of the Joint Committee
20 is to be carried out mainly by China, but is to be
21 unofficially assisted by the Japanese Government.
22 Assistance shall be offered to China after due approval
23 by the Central Government of a locally framed plan
24 for the guidance in the establishment of the Joint
25 Committee.

1 "2. When the Japanese Government's con-
2 crete plan concerning the guidance of the establish-
3 ment of the Joint Committee is completed, with the
4 assistance of the administrative guidance organs of
5 North China and of Central China, a Preparatory
6 Committee meeting shall be opened in Dairen which
7 shall make the various preparations for setting up
8 a Federal Committee.

9 "3. The Joint Committee shall be held in
10 Peiping, based on the preparations made by the
11 Preparatory Committee."

12 We shall omit the rest of this number and
13 come to No. 16 on page 15.

14 "NO. 16 - CONCERNING THE SETTING UP OF A
15 COMMITTEE FOR LIAISON WITH THE CONFERENCE ON THE
16 FIVE MINISTERS (Decided October 7, 1938/ Showa 13.

17 "1. Object of setting it up:

18 "The committee for liaison with the Con-
19 ference of the Five Ministers (temporary appointment)
20 is established in order to accelerate the performance
21 of matters agreed upon by the Conference of the Five
22 Ministers in connection with disposal of the situation
23 in China, and, in case of necessity, in order to
24 study and investigate measures to be discussed by
25 the Conference of the Five Ministers.

"II. Organization:

"This committee is a secret committee belonging to the Conference of the Five Ministers and is organized as follows:

"Members: Chief of East Asia Bureau, Foreign Office; the Chief of the First East Asia Section; Chief of Finance Bureau, Finance Ministry; Chief of Foreign Affairs Section; Chief of Military Affairs Bureau, War Ministry; Chief of Military Affairs Section; Chief of Naval Affairs Bureau, Navy Ministry; Chief of First Naval Section.

"Secretaries: The Chief of the First East Asia Section, Foreign Office; Chief of Foreign Affairs Section, Finance Ministry; Chief of Military Affairs Section, War Ministry; the Chief of the First Naval Affairs Section, Navy Ministry."

We shall omit the rest.

1 If your Honor please, we shall next offer
2 in evidence IPS document No. 2570A, being a decision
3 of the Five Ministers' Conference on the policy
4 of conducting propaganda in connection with the
5 China Incident. ITAGAKI denied that the conference
6 discussed the propaganda plan. That appears on
7 page 30,444 of the transcript. This document will
8 bear out the contents of the decision.

9 THE PRESIDENT: Mr. Logan.

10 MR. LOGAN: If the Tribunal please, I
11 object to this document on behalf of the accused
12 KIDO on the same grounds as the objection made to
13 the previous document. And I might say, in order to
14 save time, that during the presentation of the
15 prosecution's case the defendants were given
16 blanket objections to all documents offered on the
17 grounds of irrelevancy, immateriality, and incompetency.
18 May I have the same right to a blanket objection to
19 all documents heretofore offered, and to be offered by
20 the prosecution in its reopened case, on behalf of
21 the defendant KIDO?

22 THE PRESIDENT: We take it that counsel for
23 all the accused are objecting to all these documents,
24 unless they indicate otherwise.

25 That certainly is a good suggestion, if I

1 may say so, Mr. Logan, and will save a lot of time.

2 MR. LOGAN: Well, I assume the other accused,
3 defendants, will join in; I don't know; I haven't
4 discussed it with them. But I would also like to
5 add this additional ground, too: on the ground that
6 the Tribunal under the Charter had no authority to
7 reopen this case.

8 THE PRESIDENT: We take counsel for all
9 the accused to be taking that objection also unless
10 they indicate the contrary.

11 MR. LOGAN: I also would like to have a
12 reservation that the accused KIDO may, if he sees
13 fit, present evidence upon the conclusion of the
14 reopening of the case by the prosecution to each and
15 every document offered by the prosecution, with the
16 understanding that the determination of the admission
17 of such documents be on the same basis as the prose-
18 cution, that is, as to probative value and importance.

19 THE PRESIDENT: We will consider any applica-
20 tion made in due course on behalf of any of the
21 accused to tender further evidence in reply to
22 evidence given by the prosecution since the close
23 of the defense case.

24 MR. CUNNINGHAM: Your Honor, could I have
25 a suggestion or ruling on this proposition: To

1 what extent are the defense counsel bound by the
2 ruling of this Tribunal in reopening the case when
3 the defense counsel feel that the Tribunal is acting
4 illegally and beyond the Tribunal's authority?

5 MR. PRESIDENT: Now, this Tribunal obviously
6 can give no advice or direction based on the assump-
7 tion that it is acting or has acted illegally or
8 contrary to its Charter.

9 MR. CUNNINGHAM: Well, your Honor, it isn't
10 quite fair to make us acquiesce in a ruling of this
11 Tribunal which we consider is illegal, when you are
12 asking these defendants in the dock to undergo the
13 same thing which this Tribunal is doing, that they
14 were acting illegally when they were operating under
15 the order of their government; don't you see?

16 THE PRESIDENT: I shall try to be as patient
17 with you as I can, but my colleagues are all agreed
18 that you are indulging in nothing more than sheer
19 offensive propaganda; and you must desist forthwith.

20 MR. CUNNINGHAM: I asked a civil question:
21 To what extent are we bound by a ruling of the Tribunal
22 on an illegal matter? That is the thing I am asking --
23 what we consider is illegal.

24 THE PRESIDENT: Such a question is obviously
25 pointless unless it is intended to be offensive.

1 MR. CUNNINGHAM: Well, we are all agreed,
2 your Honor, that it isn't intended to be offensive.
3 I can assure you of that. It is made purely and
4 simply out of an honest conviction that we ~~are~~
5 placed in a position where we ~~either have~~ to make a
6 choice of ignoring the order of the Tribunal or
7 acquiescing under protest.

8 THE PRESIDENT: Our decisions, like our
9 judgments, are binding on all concerned. There is
10 no need for us to vindicate them, and there is no
11 right in you to challenge them, after they are given,
12 before the Court itself. The discussion is closed.

13 Judge NYI.

14 JUDGE NYI: Your Honor, may I be permitted
15 to give a word in reply to Mr. Logan's remarks,
16 objection?

17 THE PRESIDENT: We must hear you, yes.

18 JUDGE NYI: I wish to say that this document
19 bears out the program of intensified mobilization for
20 a prolonged war, which has been hitherto denied by
21 the defendants. Time and again the defendants have
22 claimed that they favored a policy of localization and
23 peaceful settlement. This decision of the Five
24 Ministers' Conference clearly set out the program
25 that they are going to continue on with a prolonged

warfare, and the foundation for its introduction

in rebuttal has been properly made on page 30,444.

ITAGAKI was shown the document, and he categorically denied it.

THE PRESIDENT: By a majority the objection is sustained and the document rejected.

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1 JUDGE NYI: The prosecution will next offer
2 in evidence IPS document No. 2178-A, entitled "The
3 Essential Points of Administration in the Hankow Dis-
4 trict, Decided by the War, Navy and Foreign Ministers
5 on October 28, 1938." ITAGAKI denied that the three
6 ministers had decided that new administrations should be
7 set up in the Hankow area after its fall to be placed
8 under the guidance of the Japanese. This appears on
9 pages 30,447 to -8 of the transcript. This document will
10 show that there was such a decision.

11 MR. LOGAN: The same objection to that, if the
12 Tribunal please.

13 JUDGE NYI: If your Honor please, this document
14 will rebut the testimony of the defense witness. The
15 document states that the growth of the so-called peace
16 preservation efforts -- were due to the efforts -- had
17 originated from the Chinese themselves. Now, this
18 document will show clearly that they fostered these
19 peace preservation societies and they guided them. This
20 represents --

21 THE PRESIDENT: Do not go any further.

22 JUDGE NYI: -- the first step of setting up
23 the puppet central government, and therefore the prose-
24 cution considers it of extreme importance.

25 THE PRESIDENT: By a majority the objection is

overruled and the document admitted on the usual terms.

1 CLERK OF THE COURT: Prosecution document
2 2178, being a volume printed in Japanese, entitled
3 "New Chinese Central Government," will receive exhibit
4 No. 3741 for identification only; the excerpt therefrom,
5 being prosecution document 2178-A, will receive exhibit
6 No. 3741-A.
7

8 (Whereupon, the document above
9 referred to was marked prosecution exhibit
10 No. 3741 for identification; the excerpt
11 therefrom being marked prosecution exhibit
12 No. 3741-A and received in evidence.)
13

14 JUDGE NYI: With the permission of the Tri-
15 bunal, I shall read:
16

17 "The Essential Points of Administration in the
18 Hankow District.
19

20 "Decided by the War, Navy and Foreign Ministers
21 on October 28, 1938.
22

23 "Administration of political affairs in the
24 Hankow District shall be for the time being based on
25 the following:

 "No. 1 Principle.

 "Political affairs in the Hankow District shall
be administered by /Japan/ with the sphere of the
operations of the Imperial Army and of maintenance of

1 peace and order, and the carrying out of other affairs,
2 shall be entrusted to the Chinese side as far as pos-
3 sible.

4 "No. 2 Main Points.

5 "1. Political guidance shall be exercised on
6 the following points:

7 "(1) No military administration shall be
8 especially established and the carrying out of political
9 affairs shall as far as possible await the self govern-
10 ment of the Chinese side.

11 "(2) For the time being, main efforts shall
12 be directed to the growth of the Peace Maintenance
13 Association; and with the stabilization of the situation,
14 a local anti-Comintern regime shall be established.

15 "The jurisdiction of the said regime shall be
16 for the time being the Provinces of Kiangsi, Hunan and
17 Hopeh.

18 "The said regime shall be established on the
19 Chinese initiative. However, the establishment of the
20 regime shall be accelerated with the co-operation of our
21 political guiding agency (The Liaison Conference of the
22 War, Navy and Foreign Ministry authorities at Harkow),
23 chiefly by our strategy agency (The Special Committee
24 Towards China).
25

I shall skip the rest of this page and come to

1 No. 4 on the next page:

2 "4. Administration of political affairs in the
3 Hankow District shall be deliberated, decided and put
4 into effect by the Hankow Liaison Conference of the War,
5 Navy and Foreign Ministry authorities, composed of the
6 local organs of the three Ministries.

7 "Close connections and co-operation shall be
8 maintained between the above-mentioned Liaison Conference
9 and strategy agency (The Special Committee Towards
10 China)."

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1 JUDGE NYI: The next document we are going
2 to introduce is IPS document No. 2178-B which bears
3 similar contents. Only the decision was made for
4 the administration of South China after the fall of
5 Canton.

6 THE PRESIDENT: Mr. Logan.

7 MR. LOGAN: I object to this document on
8 the same grounds as previously expressed, and in
9 addition the fact that what these people did, I think,
10 was more important than the information contained in
11 this document of what they intended to do or what
12 they wanted to do and I think it has all been covered
13 already by the evidence of the prosecution.

14 THE PRESIDENT: Mr. Mattice.

15 MR. MATTICE: On behalf of the accused
16 ITAGAKI I also object to the introduction of this
17 document for the reason that it is of no probative
18 value.
19

20 THE PRESIDENT: I think the last decision
21 covers this. The objections are overruled and the
22 document admitted on the usual terms. As to the part
23 that applies to South China, that is, the Provinces of
24 Kwantung and Kwangsi, you need not read it.

25 JUDGE NYI: With the permission of the
Tribunal I shall only read paragraph 4 at the bottom

1 of page 1 which is not contained in the last document.

2 CLERK OF THE COURT: Prosecution document
3 2178-B will receive exhibit No. 3741-B.

4 (Whereupon, the document above re-
5 ferred to was marked prosecution exhibit No.
6 3741-B and received in evidence.)

7 JUDGE NYI: (Reading)

8 "(4) In view of the fact that the officials
9 and the people, who are of special disposition, are
10 unaware of the mighty power of the Imperial forces
11 and of our national strength, the political and other
12 guidances in South China shall make efforts to bring
13 about the result of their dependence on Japan through
14 the thorough protection of the people, particularly
15 by making our military power felt."

16 I shall omit tendering No. 17 and go on with
17 18 on the order list.

18 Now we shall offer in evidence IPS document
19 3090-C, being the record of the proceedings of the
20 Imperial Conference held on 30 November 1938. ITAGAKI
21 denied that HIRANUMA made a speech in this Conference.
22 This appears on pages 30,467 to 30,468 of the transcript.
23 This document contains the full text of HIRANUMA's speech
24 on the Japanese policy toward the new puppet government
25 in Central China.

THE PRESIDENT: Where is the certificate?

1 MR. WARREN: There is a certificate; I saw
2 it.

3 JUDGE NYI: The certificate is attached to
4 the document.

5 THE PRESIDENT: It isn't on my copy.
6 I have a copy of the certificate now.

7 MR. WARREN: If the Tribunal please, apparently
8 the prosecution offered this only for the purpose of
9 impeachment of the accused ITAGAKI. However with
10 reference to the accused HIRANUMA, they could not
11 have read this document very well because it is
12 highly beneficial and I should be derelict in my
13 duty to object to it. Perhaps some other counsel
14 wants to; I have no objections.

15 THE PRESIDENT: Mr. Mattice.

16 MR. MATTICE: On behalf of the accused
17 ITAGAKI I object to the introduction of this document,
18 limited as we are as to grounds, upon the ground that
19 it has no probative value.
20

21 I do want to call attention to the fact that
22 contrary to what Judge Nyi stated about it, ITAGAKI
23 did not, at the time he was asked about the speech
24 by HIRANUMA, deny it. What he said when he was asked
25 if that was an exemplification of a copy of the speech

1 was this; and the question was: "But do you see in
2 the substance a speech made by HIRANUMA and the
3 reply made by the Foreign Minister?" ITAGAKI answered:
4 "There may be, but I am trying to tell you that I do
5 not place any trust in this document."

6 THE PRESIDENT: We think it of no importance
7 and that it has no probative value. The objection is
8 sustained and the document rejected.

9 We will recess for fifteen minutes.

10 (Whereupon, at 1445, a recess was
11 taken until 1500, after which the proceed-
12 ings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Kraft.

4 LANGUAGE ARBITER (Captain Kraft): If the
5 Tribunal please, the following language correction is
6 made: Record page 37,100, lines 7 and 8, delete "This
7 concludes the individual phase of OSHIMA's defense," and
8 substitute "This concludes the presentation of evidence
9 for the reopened OSHIMA defense phase."

10 Exhibit No. 3739, the word "ronin" in the
11 third line from the bottom of the page may be trans-
12 lated almost in this case as "roving self-styled
13 patriot."

14 THE PRESIDENT: Thank you.

15 Judge Nyi.

16 JUDGE NYI: May it please the Tribunal, we
17 shall next offer in evidence IPS document 2178-C, en-
18 titled "Policy for the Adjustment of New Relations
19 between Japan and China" decided by the Imperial
20 Conference on 30 November 1938. ITAGAKI denied the
21 contents of the document, transcript pages 30,457 to
22 30,465. This document will show the decisions reached
23 in the Imperial Conference regarding the relations be-
24 tween Japan and the puppet government in central China.
25

THE PRESIDENT: Admitted on the usual terms.

1 (Whereupon, Mr. Mattice approached
2 the lectern.)

3 THE PRESIDENT: We have your blanket objections.

4 JUDGE NYI: Your Honor, if the defense wants
5 to enter their objections I wish something can be
6 read further. I wish respectfully to point out that
7 this document is of extreme importance because it
8 embodies the decisions which were supposed to meet
9 the situation branded as "the new order in East Asia."
10 To the Japanese at that time it was considered the
11 beginning of a new era. In our submission, this
12 document meets both the requirements of importance
13 and probative value.

14 THE PRESIDENT: Mr. Mattice.

15 MR. MATTICE: If the Tribunal please, a glance
16 at the page cited, 30,457, will disclose that Mr.
17 ITAGAKI did not there make the answer which Judge Nyi
18 stated. He was asked whether this document contained
19 the decision of the conference and the answer was:
20 "I don't know what kind of a document this is. It is
21 similar to the decision I referred to -- 'decision of
22 November 30 I referred to in my affidavit. However,
23 it is impossible for me to judge whether it is exactly
24 the same." That is no denial.

25 It is the same meeting -- the Council in the

1 Presence of the Emperor meeting -- the same date as
2 that mentioned in the document previously presented,
3 which was rejected. It is therefore repetitious.
4 We submit that this document has no probative value.

5 JUDGE NYI: If your Honor please, Mr. Mattice
6 has not read the rest of this question, on page 30,458
7 because it continued and the defendant, the accused
8 ITAGAKI, consistently refused to admit that it was the
9 same as the original, and he says repeatedly that "I
10 do not remember the whole of it, and I cannot say
11 whether it is exactly the same as the original."
12 This is nothing but a denial of it.

13 With regard to the second point, the last
14 document which I intended to offer embodies the speech
15 made by HIRANUMA and it was his opinion on these
16 decisions. But this document embodies the whole of
17 the decisions themselves. In our submission, this
18 is both important and of probative value.

19 THE PRESIDENT: Well, who was present at this
20 meeting? You can't tell us. You must prove it. There
21 may be evidence somewhere.

22 JUDGE NYI: There was another document which
23 is marked IPS 3090-B, which was omitted. It is listed
24 as No. 17. In this there is a complete list of the
25 members who were present in this Imperial Conference.

1 THE PRESIDENT: As it is, we must reject it.
2 By a majority, the objection is sustained and the
3 document rejected.

4 JUDGE NYI: We shall next offer in evidence
5 IPS document 1519-K, being a decision of the Five
6 Ministers' Conference on 6 June 1939, containing
7 a policy for the establishment of a New Central
8 Government in China. ITAGAKI denied that the Five
9 Ministers' Conference on that day decided on the
10 policy of establishing a new central China Government
11 (Transcript page 30,468 to 30,470.) This document will
12 serve to rebut his denial.

13 I wish to point out that these decisions were
14 reached at the time when Wang Ching-wei was visiting
15 Japan for the purpose of setting up a new central
16 government in China. It has been the position of the
17 accused that the establishment of that government
18 was by the initiative of Wang Ching-wei himself, but
19 this document will serve to show how Japanese policies
20 were at play in this establishment. Therefore, in our
21 submission, it is extremely important and of probative
22 value.

23 MR. WARREN: If the Tribunal please, because of
24 some error 1519-K was not served on all the accuseds'
25 counsel and for that reason I have been requested by

1 counsel for ITAGAKI to make his objections. He has the
2 certificate and I have the document, that is the way we
3 got them.

4 In reading this document, it appears to have
5 no probative value. It refers to the decisions made
6 by the Five Ministers' Conference. We have a great deal
7 of testimony in on that.

8 Under the ruling laid down by the Tribunal
9 this morning we are not concerned, I take it, with
10 the question of the impeachment of ITAGAKI. If it were
11 used for impeachment, so general are the terms of this
12 document that it would be of little value to the Tribunal,
13 but we will object to it on the general grounds that it
14 has no probative value.
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JUDGE NYI: If your Honor please, sir, Mr. Warren has been referring to the Five Ministers' Conference. He thinks that there are enough materials on the Five Ministers' Conference, but I wish to point out that the Five Ministers' Conference decisions we already have were decided in the period between July and September 1938. But this document shows the decisions reached on June 6, 1939. These decisions were especially important because they were reached at the time when Wang Ching-wei was in Japan. He had been brought over by KAGESA who had been ordered by the Five Ministers' Conference to take him from Hanoi to Shanghai and Shanghai to Tokyo. And these decisions will represent, so to speak, the orders given by the Japanese Government to Wang Ching-wei and will establish the puppet character of the government.

THE PRESIDENT: Is that new matter to that extent?

JUDGE NYI: The fact that Wang Ching-wei was brought over and saw -- talked with ministers, the Prime Minister HIRANUMA and War Minister ITAGAKI and Prince KONOYE, are in evidence. We need these materials here contained to clarify -- to show what policies have been definitely reached by the Japanese Government with regard to the setting up of this government

in China.

1 MR. WARREN: If the Tribunal please, I can't
2 agree from the record quoted -- cited by counsel
3 that there is any new matter here. Record 30,469,
4 the prosecution, in attempting to refresh the witness'
5 memory, that is, ITAGAKI's memory, concerning this
6 so-called meeting told him that in order to refresh
7 his recollection that it was at the time that Wang
8 Ching-wei was in Tokyo. Now, the answer that he gave
9 is to the effect that he didn't remember any decisions
10 reached in the early part of June in that year, and
11 he states that his recollection is that Wang did
12 arrive in the first part of June, and he supposes that
13 if that was the case the conference would be held prior
14 to his arrival. "But I have no recollection," he says.

15
16 Now, with reference to the statement that
17 this was a decision of the government, statement by
18 the prosecution, of course that is wrong. This was
19 a decision made by the Five Ministers' Conference.

20
21 I don't think it would help the Tribunal, I
22 don't know.

23 THE PRESIDENT: By a majority, the objections
24 are overruled and the document admitted on the usual
25 terms.

CLERK OF THE COURT: Prosecution document

1519-K will receive exhibit No. 3742.

1 (Whereupon, the document above re-
2 ferred to was marked prosecution exhibit
3 No. 3742 and received in evidence.)

4 JUDGE NYI: With the permission of the
5 Court, I shall read:

6 "A Policy for the Establishment of a New
7 Central Government.

8 "Decision made at the Five Ministers' Con-
9 ference, June 6, 1939.

10 "1. The constituent elements of a new central
11 government shall be Wang, Wu, the existing regimes,
12 and also the Chungking Government - provided that it
13 change its mind and be reformed - and, taking it up
14 as a question rested on China, shall be established
15 through mutual cooperation of these elements when con-
16 sidered proper.

17 "2. The new central government shall design
18 to adjust rightly the relations between Japan and China
19 in conformity with the principles for adjusting a new
20 relationship between these two countries, which should
21 be previously accepted by the said elements.

22 "3. The time of organization and establishment
23 of the new central government shall be decided on an
24 independent standpoint in concert with various phases
25

1 of the guidance of fullscale war. For this purpose,
2 especially fundamental actual strength as well as
3 manpower shall be completed.

4 "4. The future political system of China shall
5 be formed in accordance with a policy of separate rule
6 and national unification based on her history and actual
7 situation, but its details shall be conformed to the
8 plan of adjusting a new relationship between Japan and
9 China: from the standpoint of national defense and
10 economy, North China shall be made an intensive combina-
11 tion district of the two countries (Mongolia shall be
12 made an especially intensive anti-communistic area);
13 the lower reaches of the Yangtze River shall also be
14 another economically; a special position shall be given
15 to specified islands along the South China coast; and
16 moreover, the question of the system shall be in prin-
17 ciple entrusted to China as Chinese internal affairs
18 and intervention in it shall be avoided as much as pos-
19 sible, especially the intentions of statesmen shall be
20 respected according to the form of the new central gov-
21 ernment, and at the same time how to deal with our spec-
22 ific relations with the existing regimes shall be
23 deliberated."

24
25 I shall omit 5 and 6 on the rest of this page
and come to the next page.

Greenberg & Velden

"A Plan of Guidance for Wang's Movement.

"1. The Principle of Guidance.

"Wang shall establish a powerful government with civil and military merits, in cooperation with Wu and the existing regimes. For this purpose, he shall make necessary preparations, and in the meantime endeavor to win those influences of the Chungking government, particularly eminent persons of that government.

"2. Main Points of Guidance.

"(1) Wang shall make needed preparations so that a powerful government may be established in cooperation with Wu and the existing regimes. And preparatory movements shall cover such items as the establishment of fundamental sphere /of influence/ the movements toward Chungking, the unification of existing influences, raising of funds, full equipment of armed forces, etc; and our outward interference in these movements shall be limited as much as possible.

"(2) The establishment of the new central government shall be done in conformity with the phases of our independent guidance of war. In this connection, our Empire has the following conditions to require of Wang:

"(a) During the period of preparations for

1 the establishment of new central government, Wang,
2 Wu, and the existing regime shall work together in
3 order to make their utmost to win those influences
4 of the Chungking government, particularly eminent
5 persons of that government, and at the same time to
6 establish a powerful government with civil and
7 military merits by establishing their sphere of
8 influence.

9 "(b) The new central government shall
10 recognize the principles for adjusting the new relations
11 between Japan and China. The time of establishment
12 and its details shall be settled after consultation
13 with Japan according to the development of the above
14 preparatory movements, especially to the completion
15 of fundamental real power as well as personal resources.
16 However /Wang/ shall accept the following: that the
17 future political system of China shall be formed in
18 accordance with a policy of separate rule and national
19 unification; that its details shall be conformed to the
20 plan of adjusting a new relationship between Japan
21 and China; that from the standpoint of national defense
22 and economy, North China shall be made an intensive
23 combination district of the two countries (Mongolia
24 shall be made an especially intensive anti-communistic
25 area), and the lower reaches of the Yangtze River shall

1 be another economically; that a special position
2 shall be given to specified islands along the South
3 China coast; and further, serious considerations
4 shall be given to our special relationship with the
5 existing regimes."

6 I shall omit the rest of the page and come
7 to "3" on the next page.

8 "3. The expenses needed.

9 "Special consideration shall be given in
10 case expenses beyond the fixed expenditure should be
11 required for the realization of this movement.

12 "4. Positive and internal aid necessary
13 for this movement shall be given from the side of
14 Japan.

15 "(Note:) Movements shall be made to induce
16 Wu and the existing regimes to cooperate with Wang."

17 I shall omit the rest of the document.

18 MR. BROOKS: If the Tribunal please, we
19 requested the prosecution to read paragraphs 5 and 6
20 of page 2, which were omitted, and paragraphs (c) and
21 (d) of page 2-a of the annexed document, and they
22 desire that we read it rather than themselves.

23 THE PRESIDENT: That is irregular. They can
24 read it if they want to.

25 MR. BROOKS: We request then that it be read

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2 shall be given to specified islands along the South
3 China coast; and further, serious considerations
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20 of page 2, which were omitted, and paragraphs (c) and
21 (d) of page 2-a of the annexed document, and they
22 desire that we read it rather than themselves.

23 THE PRESIDENT: That is irregular. They can
24 read it if they want to.

25 MR. BROOKS: We request then that it be read

as a whole because it is important.

1 THE PRESIDENT: It is sufficient to invite
2 us to read it. We will do so under the circumstances.
3 There is no need to read it into the transcript.

4 MR. BROOKS: May we reserve the right then
5 to read it later, as it is in evidence?

6 JUDGE NYI: Your Honor, we next offer in
7 evidence IPS document 2178-G, being a decision of
8 the China Affairs Board. ITAGAKI denied financing
9 the so-called Wu project which was being undertaken
10 by DOHIHARA. This appears on pages 30,439-30,440 of
11 the transcript. This document will show that the
12 China Affairs Board, of which the accused ITAGAKI was
13 one of its vice-presidents, had appropriated huge
14 amounts of money from the surplus of the Chinese
15 Maritime Customs Revenues for the purpose of inducing
16 the retired General Wu Pei-fu to head a pro-Japanese
17 Government in China.
18

19 Your Honor, this document is closely related
20 to the last, especially the last which I have read,
21 "The expenses needed," on page 3-a of the last document.
22 This document will prove how the so-called peace move-
23 ment, or National Salvation League, was financed by the
24 Japanese out of the funds of the Chinese. We therefore
25 consider it a matter of extreme importance.

THE PRESIDENT: Mr. Mattice.

1 MR. MATTICE: The accused ITAGAKI objects
2 to the introduction of this document, if the Tribunal
3 please. With reference to the pages cited, 30439-30440,
4 it will appear that the accused ITAGAKI as a witness
5 did not, as stated by Judge Nyi, deny the matters
6 related by him. He was asked this question: "Now,
7 when DOHIHARA was working on Wu Pei-fu, did you also
8 have some arrangement about the finance, about the
9 expenses?" The answer was "No."

11 Now, the question was whether he, ITAGAKI,
12 personally was working on Wu Pei-fu. There is nothing
13 incorporated in that question which relates to what
14 is offered as document 2178-G.

15 Following that he was shown IPS document
16 2178-G and then was asked this question: "Do you
17 recall that as one of the decisions reached by the
18 China Affairs Board, June 23, 1939? A. No, I don't
19 recall."

21 The next question and answer following that
22 is virtually repetition of it, and then he was asked
23 this question: "Do you recall, aside from these
24 decisions of the China Affairs Board, out of your
25 own memory, that money was needed to launch these
projects; and how did you arrange for it? A. I had

1 nothing to do with that."

2 I fail to see in the passages referred to
3 by Judge Nyi anything that amounts to a denial which
4 could be the basis or subject of impeachment. The
5 document in my opinion is without probative value.

6 JUDGE NYI: If your Honor please, from what
7 counsel has just read I cannot conceive it as anything
8 but an explicit denial by ITAGAKI. ITAGAKI was a
9 member of the Five Ministers' Conference and here is
10 the decision of the Five Ministers' Conference: that
11 expenses should be provided. ITAGAKI was one of the
12 vice-presidents of the China Affairs Board and here
13 is the decision of the China Affairs Board: that the
14 Wu project should be financed in such and such a way.

15 THE PRESIDENT: By a majority the objection
16 is overruled and the document admitted on the usual
17 terms.

18 CLERK OF THE COURT: IPS document 2178-G
19 will receive exhibit No. 3743.

20 (Whereupon, the document above
21 referred to was marked prosecution exhibit
22 No. 3743 and received in evidence.)

23 JUDGE NYI: With the permission of the
24 Tribunal I shall read exhibit 3743:

25 "On the Expenses Required for the 'Wu' Project.

"Decided in the conference of the China Affairs Board; June 23, 1939.

"The expenses required for the 'Wu' Project will be defrayed as follows, in accordance with the expenses required for the anti-Comintern National Salvation League:

"1. The expenses required for the 'Wu' Project from June onwards will be paid from the surplus of the Maritime Customs and the total amount required for the five months from June onwards is not to exceed ten million yuan (not more than two million yuan per month). The expenses thereafter will be further studied.

"2. The surplus of the Maritime Customs will be drawn under the name of some Japanese for the time being.

"3. The monthly two million yuan will be drawn equally from the surplus of the Maritime Customs of North China and of Central China. It will be granted in the form of a loan to the responsible Japanese personnel on the actual spot of this project. The Japanese Government and the supervisors of the Maritime Customs' deposit on the spot must consent to offer the same sum from the Maritime Customs' deposit as collateral security to the Yokohama Specie Bank.

1 Adequate measures will be taken to direct the
2 Chinese Government to pay back (or settle) these
3 debts to the Yokohama Specie Bank at a proper time.

4 "4. The money to be granted will be paid
5 in Federal Reserve Bank notes in North China and in
6 Chinese currency notes in Central China. The operation
7 of selling Chinese currency and buying yen notes will
8 be conducted by the Yokohama Specie Bank, and a time
9 and method, which will not affect our currency move-
10 ments, will be chosen."
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1 Your Honor please, we shall next offer in
2 evidence IPS document 1990 (1), being another decision
3 of the China Affairs Board. We offer this to rebut
4 ITAGAKI's denial that the anti-Comintern National
5 Salvation League in China was financed by Japan.
6 That appears on page 30,436 to 30,439.

7 MR. MATTICE: Defense objects to this docu-
8 ment for the same reasons as in respect to the previ-
9 ous document.

10 THE PRESIDENT: We do not need all these
11 details.

12 JUDGE NYI: Your Honor, please, I just wish
13 to point out that there is one thing in this document
14 which does not appear very clearly in the last docu-
15 ment. That is, the second paragraph in the middle
16 of the page: the fact that the utilization of this
17 fund shall be kept in secrecy. And that will prove --

18 THE PRESIDENT: By a majority, the objection
19 is overruled and the document admitted on the usual
20 terms.

21
22 CLERK OF THE COURT: Prosecution document
23 1005 (1) will receive exhibit No. 3744.

24 (Whereupon, the document above
25 referred to was marked prosecution exhibit
No. 3744 and received in evidence.)

1 THE PRESIDENT: Read only the new part if
2 there be one.

3 JUDGE NYI: With the permission of the Tri-
4 bunal, I shall read just this paragraph which I have
5 referred to:

6 "2. When utilizing the surplus funds of the
7 Maritime Customs revenue, Japanese names shall be
8 used in order to maintain secrecy."

9 THE PRESIDENT: Judge Nyi.

10 JUDGE NYI: I shall next offer in evidence
11 IFS document 1685-D which is an outline to guide the
12 Central Political Conference, dated November 1, 1939
13 and decided by a conference of the China Affairs
14 Board. This document was exhibited to the defendant
15 SUZUKI who said he could not say he had seen the docu-
16 ment before and who refused to admit that the contents
17 of the document involved the decision of the China
18 Affairs Board of that date as shown on record page
19 35,290. It will not be necessary that we read the
20 entire document. The original of this document is
21 exhibit 270 for identification, admitted as such on
22 record page 3605.

23 THE PRESIDENT: No objection? Apparently
24 there is no objection. Sometimes the objections will
25 come very late. Admitted on the usual terms.

CLERK OF THE COURT: Prosecution document
1 1685-B will receive exhibit No. 3745.

2 (Whereupon, the document above
3 referred to was marked prosecution exhibit
4 No. 3745 and received in evidence.)

5 MR. WARREN: Your Honor, we are trying to
6 get this record straight here.— it is in the court-
7 room -- to check that statement by counsel. Appar-
8 ently SUZUKI's counsel is not here; I do not know.
9 He is here, so no objection.

10 THE PRESIDENT: You are not reading it all,
11 Judge, are you?

12 JUDGE NYI: No.

13 "OUTLINE TO GUIDE THE CENTRAL POLITICAL
14 CONFERENCE

15 "1 November 1939

16 "Decided by Conference of China
17 Affairs Board.

18 "I. PRINCIPLES

19 "In view of the development of situations at
20 home and abroad, the policy to establish a new Central
21 Government shall have as its main aim the perfection
22 of the inner basic conditions of China, and, as an
23 aim of next importance, the policies toward the Third
24 Powers and Chungking."
25

I shall omit reading of the rest of the
paragraph and come to Roman numeral II:

"II. CARDINAL POINTS

"1. Concerning the Central Political Conference, the main component people of the new Central Government shall first be made to understand the matters desired and demanded by our side as specified hereunder. The Conferences shall be so directed that there shall be no conflict between the above and what will be resolved by the Chinese side."

I shall omit 2 and come to 3 on the same
page:

"3. The emphasis of the Chinese side shall be to complete the preparations for the replenishment of manpower and the acquirement of basic power, with regard to the establishment of a base-area, the policy against Chungking, the organization of armed forces, and the preparation of funds. The particular emphasis shall be the destruction and undermining of the various powers of the Chungking side. Efforts shall be directed to the above purposes with WANG as the central figure and the full cooperation of WU and the existing regimes."

I shall omit reading number 4 and come to 5
on the same page:

1 "5. The political creed and the policies of
2 the new Central Government shall include the prin-
3 ciples for the re-adjustment of the new relationship
4 between Japan and China, the necessary recognition
5 of existing facts, as well as the desires of the
6 Japanese side. It shall include nothing that will
7 contradict the above."

8 I shall omit reading 6 and 7 on page 2 and
9 come to number 8:

10 "8. Concerning the adjustment of the new
11 relationship between Japan and China, after the
12 formation of the Central Government and before the
13 establishment of the new Central Government, the
14 leading figures of the said Government shall make a
15 firm pledge to the Japanese side."

16 I shall omit reading the rest of the docu-
17 ment altogether.

18 THE PRESIDENT: Is the next document a long
19 one?

20 JUDGE NYI: Not very long.

21 The next document I am offering is document
22 No. 4035, Item 4. On page 30,496, line 26 to page
23 30,497, line 9, ITAGAKI in his testimony denied
24 sending instructions to his Ambassador OSHIMA through
25 the Military Attache to announce the positive atti-

tude of the Japanese Government before Hitler's speech.

1 I now offer in evidence for identification
2 only IPS document 4035, Item 4, a captured German
3 document which is a telegram from the German Ambassa-
4 dor in Tokyo to the State Secretary, bearing date
5 30 April, 1939; and I offer in evidence IPS document
6 No. 4035, Item 4A, an excerpt therefrom in contra-
7 diction of the foregoing testimony of ITAGAKI.

8 MR. SHIMANOUCHI: On behalf of the defendant
9 OSHIMA I object to this document on three grounds.
10 This document has no relevancy or materiality with
11 regard to OSHIMA's case. The contents of this docu-
12 ment are nothing more than hearsay. This document --
13 the third reason is that this document was not shown
14 to the witness KAWABE, Torashiro or defendant OSHIMA
15 or defendant ITAGAKI. KAWABE, Torashiro was a mili-
16 tary Attache. From the number of this document it is
17 clear that this document was in the possession of
18 the prosecution before October last year, 1946.

19 THE PRESIDENT: We think it unimportant.
20 You do not want to argue it, do you? The objection
21 is sustained and the document rejected.

22 (Whereupon, at 1600, an adjournment
23 was taken until Thursday, 15 January
24 1948 at 0930.)
25

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